



Appeal Decision

Site visit made on 19 October 2020

by C J Leigh BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 December 2020

Appeal Ref: APP/J1535/W/20/3250679

The Firs, 191 High Road, Chigwell, IG7 5AS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Impact Capital Real Estate against the decision of Epping Forest District Council.
 - The application Ref EPF/3039/19, dated 17 December 2019, was refused by notice dated 24 March 2020.
 - The development proposed is the demolition of existing residential dwelling and replacement with eight apartments.
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Application for costs

1. An application for costs was made by Impact Capital Real Estate against Epping Forest District Council. This application is the subject of a separate Decision.

Decision

2. The appeal is dismissed.

Main issues

3. The main issues in this appeal are the effect of the proposed development on:
 - a) the character and appearance of the surrounding area, and the setting of the adjoining listed building;
 - b) the living conditions of adjoining occupiers and users of the public footpath by virtue of outlook and overlooking;
 - c) highway safety and the free flow of traffic;
 - d) the Epping Forest Special Area of Conservation.

Reasons

a) Character and appearance

4. The appeal site contains a large bungalow that fronts High Road. The site slopes gently down to the west. To the south of the site – separated by a public footpath – is a short terrace of two storey houses with gable ends fronting High Road. To the north is Oak Cottage, a Grade II listed building that is two storeys with a mansard roof, with a large oak in the front of the plot. To the west is a cul-de-sac of two storey houses. Opposite the site to the east are modern apartment buildings.
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5. Planning permission exists for the demolition of the existing property and replacement with a single family home (ref. EPF/2674/18). This would be a large house filling most of the plot width, roughly L-shaped, being two storey when seen from the front elevation and three storey at the rear due to the change in levels on the site. I see no reason to doubt why this extant permission would not be implemented on the site, and so I consider this development to be a reasonable fall-back position for the appellant.
6. The massing and general form of the apartment building proposed in the current appeal is similar to this extant scheme. The changes include the front elevation incorporating dormers in the roofspace, a larger gable and a raised parapet. Given the diversity of the area within which the appeal site sits, these changes to the design and the overall scale of the building would be appropriate. The building itself would also sit comfortably in the street and on its plot as an appropriately-proportioned design. The scale and design of the building as seen from the rear would similarly sit comfortably within the area, when considering the extant permission.
7. Under s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 I have a duty to have special regard to the desirability of preserving the setting of a listed building. Paragraph 190 of the National Planning Policy Framework (the Framework) requires an assessment of the particular significance of any heritage asset affected by a proposal, including by development affecting its setting.
8. The listed property of Oak Cottage is an 18th Century house, extended in the 19th Century, and is timber framed with a mixture of stock brick facing, roughcast rendering and weatherboarding, with a slate roof. The significance of the building lies in its vernacular architectural style. The proposed development would be set lower than the height of Oak Cottage and sited notably further back in its plot, away from Oak Cottage. These matters, and the good tree cover within Oak Cottage's plot, mean the proposal would not impose upon Oak Cottage. Thus, the setting would be preserved and there would not be any to the significance of the building as a heritage asset.
9. On the first main issue it is concluded that the proposed development would not harm the character and appearance of the surrounding area, nor the setting of the adjoining listed building. Thus, it would be consistent with the relevant policies of the development plan, namely Policies CP2 and DBE1 of the adopted Epping Forest Local Plan 1998 and Alterations 2006 (LP), and Policy DM9 of the emerging Epping Forest Local Plan Submission Version 2017 (LPSV), insofar as they seek to ensure the quality of the built environment is maintained and is of a high quality of design that respects the setting and context. There would also not be any conflict with the Framework on this main issue.

b) Living conditions and footpath

10. I have commented earlier that the siting, height and massing of the proposed development is similar to the extant scheme for a single house on the site. Given this reasonable prospect of that extant permission being implemented, I consider there would be no material difference as to the effect of the current proposal on the outlook from adjoining occupiers. The building proposed in this appeal would be set distant enough from adjoining properties to ensure no overbearing impact.

11. I saw at my site visit that the footpath to the south is already tightly enclosed by the walls of the bungalow, 4 The Lanterns, and the boundary fence. The proposed change to this sense of enclosure in the current appeal would be no different to that in the extant permission, and would in any event not materially affect how this footpath is experienced.
12. However, I do have concerns regarding the effect of the proposal on the privacy of neighbours. Although the proposed building is similar in scale and design to the extant permission, the submitted drawings show that the rear elevation would have its raised ground floor level (due to the slope of the site) and first floor containing full height windows in the projecting rear gable, opening behind Juliette balconies. These are shown to serve the sole living spaces to those flats. This arrangement is materially different to the extant scheme for a single house, where the windows in the rear elevation serve bedrooms or are not the sole windows to principal living accommodation. From my observations at the site visit it is my judgement that these windows would cause harm to the privacy of adjoining occupiers by reason of introducing overlooking at high levels into their private garden areas.
13. Although I have found no harm to the footpath or to the living conditions of adjoining occupiers in certain respects, it is my overall conclusion on the second main issue that the harm arising to overlooking represents a conflict with Policy DBE9 of the LP and Policy DM9 of the LPSV insofar as they seek to ensure new development does not cause harm to the living conditions of existing occupiers of properties.

c) Highway safety and free flow of traffic

14. The submitted drawings show gates directly on the frontage of the site, opening into an area for manoeuvring and parking. The Council's Highways Officer has raised objection to the proposed access, and states that it should be widened to 5.5m for the first 6m of the site with no gates within 6m of the carriageway.
15. I saw at my site visit that High Road is a busy single carriage width road, with a variety of private and commercial vehicles traveling along it. Turning vehicles have the potential to obstruct the passage of other vehicles. I also saw that the modern flats opposite have gates set-back from the carriageway where vehicles can pull off the highway whilst waiting for the gates to open, and also to observe and wait to see if the manoeuvring area of the car park behind was free; I observed several such movements during my visit. The houses of The Lanterns to the south have a similar access arrangement that allows vehicles to pull off the road.
16. This arrangement would not exist in the proposed development. The gates lie on the edge of the site and, even if removed, any vehicle turning into the site would be immediately within the area where other vehicles may be manoeuvring. This has the potential for conflict between vehicles on the appeal site, or else a vehicle waiting on the road until the parking area is clear to enter; either scenario should be avoided. Hence, I agree the request of the Highways Officer is justified and, for this reason, I do not agree with the appellants that this matter can be addressed by simply having a condition preventing gates being installed where shown: the harm to highway safety arises from the layout of the parking area and the access into there.

17. On the third issue it is therefore concluded that the proposed development would be harmful to highway safety and the free flow of traffic. This would conflict with the relevant planning policy contained in paragraph 108 of the Framework, namely that safe and suitable access to development sites can be achieved for all users.

d) Epping Forest Special Area of Conservation

18. The appeal site lies within the 3 km zone identified by Natural England as being likely to result in harm to the Epping Forest Special Area of Conservation (SAC) due to increased leisure use and an increase in traffic impacting on air pollution. The proposal is for 7 additional dwellings. Given the site's proximity to the SAC there is a reasonable likelihood that it would be accessed for recreational purposes by future occupants of this development. This additional activity would have the potential, either alone or in combination with other development in the area, to have a significant effect on the habitats site.
19. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require that the competent authority must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SAC. The effects arising from the proposal need to be considered in combination with other development in the area and adopting a precautionary approach.
20. The Council has agreed with Natural England that developments should make a financial contribution to mitigate against the harm the proposal will bring to recreational receptors within the SAC. The appellants have not agreed to this: they point to the extant permission being the same size as the proposed scheme. However, the issue is not the physical size of the built development but, as noted above, the increase in number of dwellings proposed and the likely additional pressure on the SAC.
21. In terms of air pollution, I am informed the Council is currently working with Natural England regarding an updated Habitats Regulation Assessment to assess the likely significant effect of development over the period of the Local Plan and, until that is finalised, the Council cannot grant planning permission on any planning applications which would result in a net additional increase in vehicle movements within the District. Again, the issue on this matter with regards to the current appeal is not, as the appellants state, that the proposal is for a development of similar physical scale to the extant permission, but there would be an increase in 7 dwellings on the site, and hence an increase in vehicle movements.
22. In light of the situation regarding air pollution, and as I have not been provided with a signed and dated Unilateral Undertaking making provision for the required contribution regarding increased pressure on the SAC, I have taken a precautionary approach to this proposed development. I thus consider that, on the basis of the evidence before me, the appeal scheme would be likely to have a significant adverse effect on the integrity of the SAC due to the potential increased disturbance through recreational activity and increase in air pollution. The proposal would therefore fail to comply with the requirements of the Regulations as well as Paragraph 175(a) of the Framework which states that where significant harm to biodiversity resulting from a development cannot be adequately mitigated, then planning permission should be refused. It would also fail to comply with policy NC1 of the LP and policies DM2 and DM22 of the

LPSV, which seek to ensure that development does not adversely affect Special Areas of Conservation.

Overall conclusion

23. The appeal site is well-located for housing, being within close walking distance of a range of public transport options and local facilities. The Framework seeks to make the effective use of land for homes and other uses, and to significantly boost the supply of housing. These matters weigh in favour of the proposed development and the increase in housing on the site compared to extant permission. I also recognise that the proposal would be broadly consistent with the general economic and social objectives of the Framework in supporting growth and providing homes.
24. However, I must balance these matters against other recognised planning objectives. Although I have found the proposed development does not conflict with a number of matters in this appeal, the harm that I have identified with regards to the main issues – and the consequential conflict with the development plan and the Framework – is sufficient to outweigh those findings. That harm and conflict with national and local planning policies also outweighs the benefits of the scheme. Thus, the appeal is dismissed.

C J Leigh

INSPECTOR